



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2004

Mr. Javier Gonzalez
Assistant Chief
Pharr Police Department
1900 South Cage
Pharr, Texas 78577

OR2004-4361

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202328.

The Pharr Police Department (the "department") received a request for the media release, arrest report, and mugshot concerning case number 03-31035. You state that you have released basic information. *See* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You claim that the submitted mugshot is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the department did not submit the responsive arrest report to this office for our review. However, the submitted documents indicate that the department released a redacted copy of the arrest report to the requestor. We note that a governmental body that seeks to withhold information from disclosure must seek a ruling from this office unless this office has previously issued a ruling to the governmental body on the precise information at issue or has issued a prior determination that the governmental body may withhold a specific category of information without the necessity of requesting a determination from this office. Gov't Code § 552.301(a); *see* Open Records Decision No. 673 (2001) (discussing standard for issuance of previous determinations). You do not indicate that this office has issued a ruling to the department concerning the arrest report at issue. Furthermore, after review of our records, we find that the department has never been issued a previous determination allowing it to withhold information from disclosure without the necessity of requesting a

decision from this office. *But see* Open Records Decision No. 670 (2001) (concluding that all governmental bodies subject to Public Information Act may withhold information that is subject to Gov't Code § 552.117(2) without necessity of seeking decision from this office). Therefore, since you have not submitted the redacted information for a ruling, the department must release the arrest report in its entirety. *See* Gov't Code § 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances).

We will now address your arguments against disclosure for the submitted mugshot. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the case is currently active. You also state that the Hidalgo County District Attorney's Office has accepted charges in this matter and that the case is pending assignment. Based upon these representations, we conclude that release of the mugshot would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, you may withhold the mugshot under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the


governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 202328

Enc. Submitted documents

c: Mr. Javier Alvarez
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Donna, Texas 78537
(w/o enclosures)